IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.Rev.Pet.No. 1083 of 1999()

SC.67/1996 of ADDL. SESSIONS COURT, THRISSUR
CRA.201/1997 of II ADDL. ASSISTANT SESSIONS COURT, THRISSUR

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REVN. PETITIONERS: APPELLANTS 1 TO 7/ACCUSED 1 TO 6 & 11

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1. ASOKAN
   S/O.PARATHIL VELAPPAN, CHATHANKADU DESOM, POOKODE VILLAGE.

2. KUTTAN
   S/O.NALLORPPULLY PARAMBIL KUTTAPPU
   CHATHANKADU DESOM, POOKODE VILLAGE.

3. JOHNSON
   S/O.CHEERAN ANTONY, CHATHANKADU DESOM, POOKODE VILLAGE.

4. RAMAKRISHNAN
   S/O.MATHRAMKODE AYYAPPAN
   CHATHANKADU DESOM, POOKODE VILLAGE.

5. SUBRAHMANIAN
   S/O.CHOLAYIL AYYAPPU, CHATHANKADU DESOM, POOKODE VILLAGE.

6. NARAYANAN
   S/O.CHAKKARATH KARAPPAN
   CHATHANKADU DESOM, POOKODE VILLAGE

7. SHABIN
   S/O.PARATHIL DEVADAS, CHATHANKADU DESOM, POOKODE VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP 1083/1999

ORDER ON CRL.M.P.NO.4982/1999 IN CRL.R.P.NO.1083/1999

DISMISSED

29.5.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.1083 of 1999

Dated this the 25th day of May, 2007

O R D E R

The revision petitioners are the accused in S.C.No.67/96 in the file of the 2nd Additional Assistant Sessions Court, Thrissur and stands convicted for the offences under Sections 143, 147, 148, 447, 324, 427 and 436 read with Section 149 of IPC and sentenced to R.I. for five years each and to pay a fine of Rs.1,000/- each and in default, to undergo simple imprisonment for three months each for the offence under Section 436 read with Section 149 of IPC and also to undergo R.I. for two years each for the offence under Section 324 read with Section 149 of IPC. No separate sentence was awarded for the rest of the offences.

2. The prosecution case is that on 9.4.1995 at about 9.30 p.m., the accused, 19 in number, formed themselves into an unlawful assembly, armed with deadly weapons, trespassed into the residential compound of PW1 and committed mischief in the house of PW1 and destroyed coconut plants and caused damage

to the house of PW1 by pelting stones and set fire to the firewood shed and caused hurt to PWs' 2, 6, 7 and 8 by cutting with a sword, throwing stones and beating with the iron pipes. The damages caused is to the tune of Rs.75,000/-.

3. Except the revision petitioners who were the accused Nos.1 to 6 and 11, the rest were acquitted. The evidence adduced in the matter consisted the testimony of PWs' 1 to 13, Exts. P1 to P8 and MOs' 1 to 14. When questioned under Section 313 of Crl.P.C., the accused have stated that the case is a false one and foisted on them on account of political rivalry. The occurrence witnesses examined were PWs' 1, 2, 6, 7 and 8. Except, PW1, the rest of them sustained injuries. PWs' 1 and 2 witnessed the entire incident. PWs' 7 and 8 who were neighbours reached the place on hearing of the commotion and seeing the fire. PWs' 1 and 2 are brothers and residents of the particular house which was attacked. They have testified with respect to the incident. The evidence of PW1 who witnessed the incident and that of Pws' 2, 6, 7 and 8 who were the injured in the transaction constituted the core of the prosecution evidence.

4. The main contention raised by the counsel for the

revision petitioner is that there is a delay of 7 days in the FIR reaching the court. Hence, it is submitted that there is every possibility of deliberate inclusion of innocent persons as accused in the incident, especially in view of the fact that the motive of the incident involved is political animosity. The assailants and the victims belong to different political parties. It is in evidence that the person belonging to the accused faction was assaulted by the rival group on the particular day in the day time. The other contention is that the wound certificate have not been properly recorded and that no reliance can be placed on the same. Further, the injuries sustained are of a very minor nature. It is also pointed out that PWs' 1 and 2 had identified the culprits through the window on the upstair portion of the house. The time of the incident is 9.30 p.m. It is also pointed out that the house is not an electrified one. Possibility of identifying the accused at a distance is remote. It is also pointed out that the evidence of prosecution witnesses is that the assailants consisted of a large group. PW1 has stated that apart from the accused there were about 20 persons more. The contention is that in such circumstances it is unlikely that the witnesses would have

identified the accused at such a distance and in the absence of any electric light and only in the moon light.

5. The incident has taken place on 9.4.1995 at 9.30 p.m. and the FIR registered on 10.4.1995 at 8.30 am. But the same reached the court only on 17.4.1995. The courts below have relied on the explanation of PW12, the police official who recorded in the FI statement that 13th to 16th of April, 1995 were holidays. Counsel for the revision petitioners has relied on the decision reported in **State of Rajasthan v. Teja Singh** (2001 (3) SCC 147) wherein the Supreme Court has definitely held that holidays intervening is not an explanation for the delay. In the decision cited the delay was of three days. The court sustained the acquittal by the High Court. I find that in the above case there were other circumstances as well. There was no independent corroborative evidence to support the evidence of interested witnesses. The evidence of occurrence witnesses examined was also found not satisfactory. Hence, I find that the observations of the court below that only on account of the above lapse on the part of the investigating officer, the prosecution case cannot be rejected, is correct.

6. Regarding the identification, the evidence of the injured witnesses is that they identified the accused who are of local persons, in the moon light and in the blaze of fire. The version is that the accused have set fire to the firewood shed. It is proved that PWs' 2, 6, 7 and 8 have sustained injuries and were hospitalised. The wound certificate produced would show that PW6 was an inpatient for 7 days. The other witnesses also, it is seen from the wound certificate, were admitted in the hospital. On a perusal of the wound certificate produced it cannot be said that injuries sustained by all the witnesses are minor in nature. It is the evidence that the accused were at the scene of occurrence for a certain time as they have pelted stones and set fire to the firewood shed and cut down coconut saplings and other trees. The evidence is that the injured were attacked with iron rods, wood reapers, swords and sticks. The version of the witnesses that they were attacked in close proximity and that they could identify the accused need not be disbelieved. PWs' 3 and 4, the doctors who issued the wound certificates i.e, Exts. P2 to P5 have proved the same. Ext. P7 scene mahazar which was duly proved would show that considerable damage was

caused to the property and the firewood shed. The firewood shed was partly burned and the root of house was also damaged.

7. The fact that except Ext. P3 wound certificate with respect to PW6 the rest of the wound certificates are not issued in the proper printed format, there is no reason to discard the same. The doctors had testified that the printed forms were not available. The names and identification marks of the injured are mentioned in the wound certificates except in Ext.P2 in which identifications marks are not mentioned. In view of the fact that the wound certificate have been properly issued by the doctors who issued the same, I find that the contention of the counsel for the revision petitioner that the wound certificate cannot be treated as proper evidence cannot be upheld. In the circumstances, I find that the concurrent findings of the court below, that the accused/revision petitioners are guilty of the offences alleged, is to be affirmed. The conviction is confirmed.

8. The counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in the year 1995 and 10 years have elapsed and that the accused were so far facing criminal proceedings and living under the shadow

of the possible imprisonment and that the parties are no longer at loggerheads. In view of the long delay in the matter, I find that it is not necessary to sentence the accused to undergo imprisonment. It is seen that they have undergone pre-trial detention. In the circumstances, sentence imposed for the offence under Section 436 read with Section 149 IPC is modified to imprisonment already undergone and to pay a fine of Rs.15,000/- each and in default, to undergo simple imprisonment for two months each. No separate sentence is awarded for the rest of the offences. The fine amount, if realised, will not be paid to PW1.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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